

ESTTA Tracking number: **ESTTA3532**

Filing date: **12/01/2003**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92042537
<b>Party</b>	Defendant Clientele, Inc. Clientele, Inc. 14101 NW 4th Street Sunrise, FL 33325
<b>Correspondence Address</b>	Clientele, Inc. 14101 NW 4th Street Sunrise, FL 33325
<b>Submission</b>	Answer and Counterclaim
<b>Filer's Name</b>	Jason Psaltides
<b>Filer's e-mail</b>	jasonpsa@bellsouth.net
<b>Signature</b>	/e-signature/
<b>Date</b>	12/01/2003
<b>Attachments</b>	AnswerCtrPetition.pdf ( 3 pages ) transmittalLetter.pdf ( 1 page )

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
Washington, District of Columbia

In the Matter of Registration No. 2,740,269  
Trademark: SLIMMING FACTORS  
Issued on July 22, 2003  
TPK Pharmaceutical. LLC  
Petitioner,

Vs.

Clientele, Inc.  
Registrant/ Respondent/ Counterclaim Plaintiff

Cancellation No.: 92042537

November 28, 2003

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513  
Box: TTAB NO FEE

ANSWER AND COUNTERCLAIM TO PETITION FOR CANCELLATION

Clientele, Inc., as Registrant/ Respondent/ Counterclaim Plaintiff (the "Registrant"), by and through its undersigned counsel, for its answer to the Petition for Cancellation, states the following. Allegations made on belief are premised on the belief that the same are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. Registrant, for its Answer to the Petition for Cancellation filed by plaintiff TPK Pharmaceutical. LLC (the "Plaintiff"), respectfully alleges as follows:

ANSWER

1. Admit that plaintiff purports to state claims for prior trademark use in the Petition for Cancellation; specifically deny that Registrant is liable for any of the causes of action contained in the Petition for Cancellation; and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1 of the Petition and, therefore, denies same.
2. Denies the allegations of paragraph 2 of the Petition.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Petition and, therefore, denies same.
4. Denies the allegations of paragraph 4 of the Petition.
5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Petition and, therefore, denies same.
6. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Petition and, therefore, denies same.

7. Admit that plaintiff purports to state a claim under the Lanham Act and specifically deny that Registrant is liable for any such claim.

8. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8, and on that basis, deny them.

9. Registrant denies the allegations of paragraph 9 of the Petition.

10. Registrant denies the allegations of paragraph 10 of the Petition.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Petition and, therefore, denies same.

12. Specifically deny that plaintiff has any trademark rights to SLIM FACTORS. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 12 of the Petition and, therefore, denies same.

13. Registrant denies the allegations of paragraph 13 of the Petition.

14. Admit the information contained in paragraph 14.

15. Deny the allegations contained in paragraph 15.

#### AFFIRMATIVE DEFENSES

##### FIRST AFFIRMATIVE DEFENSE

16. Any trademark rights that plaintiff may have envisioned via plaintiff's application of U.S. Trademark Application Serial No 76492358 for the mark SLIM FACTORS is without merit. Plaintiff alleges a first use of March 26, 2002. Registrant, via its affiliated corporation MDR Fitness Corp. had at least three prior incidents of use of the mark, including the airing of an infomercial featuring SLIMMING FACTORS as a part of Registrant's MDR Effirtim campaign (beginning of March 2002); a commercial broadcast via MDR Fitness Corp. via the Internet (January 3, 2002); and promotional handouts (October 2001).

17. Although the Registrant's first use of the mark with the US Patent and Trademark application shows May 12, 2003, the mark was used as early as October 2001. Hence, the rights of Registrant, Clientele, Inc., to use the mark and designations are superior to those of plaintiff.

##### SECOND AFFIRMATIVE DEFENSE

18. On or about February 19, 2003, Plaintiff filed its application for the mark SLIM FACTORS, almost 11 months after its alleged first use date of March 26, 2002. During the time Registrant's SLIMMING FACTORS mark was promoted, to the date Plaintiff filed an application for SLIM FACTORS, almost a year had transpired before Plaintiff announced the selection of its mark. During the interim, Registrant's mark was widely distributed. Upon information and belief, plaintiff knew or with reasonable diligence should have known prior to the February 19, 2003 application date, of Registrant's active use the mark SLIMMING FACTORS in commerce, and remained silent. Accordingly, Plaintiff claims are barred by the doctrines of laches, estoppel, acquiescence and unclean hands.

#### COUNTERCLAIM

19. Registrant repeats, re-alleges and incorporates by reference the responses contained in paragraphs 1 through 18 as though fully set forth herein.

20. Registrant, Clientele, Inc., and its affiliated corporation, MDR Fitness Corp., are Florida corporations with their principal places of business located at 14101 NW 4th Street, Sunrise, Florida. Clientele, Inc. is the owner of Registration Number

2,740,269 and, through its affiliated corporation, MDR Fitness Corp., (MDR) used the mark SLIMMING FACTORS as promotional handouts during October 2001 and in conjunction with an infomercial during January 2002.

21. During the first week of March, 2002 Registrant aired an infomercial featuring SLIMMING FACTORS as a part of Registrant's MDR Effirtim marketing campaign, Two months prior (January 2002), Registrant, via MDR, had commercially advertised SLIMMING FACTORS via the Internet.

22. Plaintiff alleges SLIM FACTORS was distributed in the United States with a first use of March 26, 2002, and on February 19, 2003 applied for a U.S. Trademark under application Serial No 76492358.

23. Upon information and belief, plaintiff knew or with reasonable diligence should have known prior to the February 19, 2003, the application date, of the prior use of the mark SLIMMING FACTORS in commerce.

24. Plaintiff is not entitled to the registration attempted of SLIM FACTORS under Serial No 76492358 and has no standing to challenge Registrant's registered mark.

25. Registrant appoints Jason K. Psaltides, a member in good standing of the Florida Bar, practicing at 14101 NW 4th Street, Sunrise, Florida 33325, as its attorney with full power to defend and prosecute this cancellation proceeding and transact all business in the US Patent and Trademark Office in connection with said proceeding.

WHEREFORE, Registrant, Clientele, Inc. requests that judgment be entered in their favor dismissing all causes of action set forth in the Petition with prejudice; that Registrant/Counterclaim Plaintiff be awarded all costs, including reasonable attorney's fees and costs in this action because this is an exceptional case under 15 U.S.C. § 1117(a); and for such other and further relief as the Board deems just and proper.

Dated November 28, 2003

Respectfully submitted,

Psaltides & Associates

Attorneys for Registrant  
Clientele, Inc.  
14101 NW 4th Street  
Sunrise, Florida 33325  
954 845-9500 Ext 5772#

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Jason K. Psaltides

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Transmittal Letter

Please find the following correspondence items enclosed for filing in the United States Patent and Trademark Office:

1. Answer and Counterclaim to Cancellation Petition
2. Credit Card transmittal for the \$300.00 fee.

Sincerely yours,

Jason K. Psaltides

JASON PSALTIDES & ASSOCIATES  
SAWGRASS INTERNATIONAL CORPORATE PARK  
14101 NW 4TH STREET  
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